

LATONIA SMITH
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LAS VEGAS, NV 89166
725-203-2455
PLAINTIFF IN PROPER PERSON

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FILED	RECEIVED
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COUNSEL/PARTIES OF RECORD	
OCT 15 2019	
CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY:	DEPUTY

LATONIA SMITH,

Plaintiff(s),

-VS-

CASE NO. 2:19-cv-00824-GMN-EJY

FENNEMORE CRAIG,

Defendant(s).

MOTION TO VACATE ORDER OF MAGISTRATE JUDGE AND LIFT STAY

Well, Plaintiff received a myriad of letters from the Court with multiple authors. Overall, the Court seems to take issue with the Plaintiff filing an emergency motion due to the essence of the motion being bogged down by red tape and bureaucratic rules (nothing like using your own rules, when convenient, to justify injustices). There are instances when issues should be heard on an emergency basis and since most humans are not robots, those issues can be interpreted in context and can be heard. Nevertheless, Plaintiff files a "regular" motion too, for the record. In one of the many letters, the Court cites that the Plaintiff does not have proof that defendants are deleting and altering evidence, which is a very interesting statement from the Court, go figure (please provide your suggestions on that). As a premise, the Court's assertion actually prove that no one actually reads anything because the Plaintiff's wording only cites to the Court allowing defendants time to delete and alter evidence/testimony, which is true. The Court has allowed defendants time to delete and alter evidence/testimony by imposing a retroactive stay and to suggest otherwise is incredibly naïve and/or just

1 completely ignorant. Instead of gaslighting the Plaintiff by stating that she has no proof
2 of the defendants deleting evidence when it is evident that the Court is aiding
3 defendants, the Court should realize that Plaintiff's motion is really about the unethical
4 order put out by the new magistrate. Anyway, whatever, trying to go through the court
5 and legal system is a pointless game.

6 The following is a refiling (absent the declaration):

7 Plaintiff incorporates her objections to the magistrate judge's report and
8 recommendations listed herein as Exhibit 1. Plaintiff's motion is mainly based on those
9 objections and Plaintiff adds a few more commentary concerning this instant motion
10 below.

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12
13 The Federal Rules of Civil Procedure do not provide for automatic or blanket
14 stays of discovery when a potentially dispositive motion is pending. *See Skellerup*
15 *Indus. Ltd. V. City of L.A.*, 163 F.R.D. 598, 600-1 (C.D. Cal. 1995). Ordinarily, a
16 dispositive motion does not warrant a stay of discovery. *See Twin City Fire Insurance v.*
17 *Employers of Wausau*, 124 F.R.D. 652, 653 (D. Nev. 1989). See also *Turner*
18 *Broadcasting System, Inc. v. Tracindal [] Corp.*, 175 F.R.D. 554, 556 (D. Nev. 1997).

19
20 The moving party carries the heavy burden of making a strong showing of why
21 discovery should be denied. *Kor Media Group, LLC v. Green*, 294 F.R.D. 579, 581 (D.
22 Nev. 2013). See *Kabo Tools Co. v. Porauto Indus. Co., Ltd.*, 2013 U.S. Dist. Lexis
23 156928, *1 (D. Nev. Oct. 31, 2013) (citing *Holiday Sys., Int'l of Nev. V. Vivarelli,*
24 *Scharwz, and Assocs.*, 2012 U.S. Dist. Lexis 125542, *5 (D. Nev. Sept. 5, 2012)).

25 The Plaintiff does not agree that the magistrate judge had authority to stay
26 discovery that had already properly commenced under the direction of Judge George
27 Foley.
28

1 Plaintiff does not agree that magistrate judge who is not deciding the motions to
2 dismiss or the opposition thereto should use the "preliminary peek" test when deciding
3 on a motion to stay; the balancing test, which should have been used was not used,
4 which led to the magistrate judge prejudging the motion and incorrectly jumping to a
5 personal opinion that discovery should be stayed. In addition, the magistrate judge only
6 reviewed defendant's motion to dismiss in making her decision as clearly evidenced in
7 her answers (as found in Plaintiff's objections). The magistrate judge's order to stay
8 discovery and apply that stay retroactively is a judicial error and an intentional abuse of
9 discretion that only serves to prejudice the Plaintiff in this case.

10 **THERE ARE GENUINE DISPUTES OF FACT**

11 Revisiting some of the main disputes of fact which are the basis of defendant's
12 entire erroneous motions to dismiss, one of the assertions which defendants raise in
13 their motion to dismiss include the capacity in which defendant's entities and/or any
14 extensions of defendants were operating under (which was not an attorney capacity as
15 cited by defendants themselves and addressed in Plaintiff's objections attached as
16 Exhibit 1; this simply cannot be ignored). Defendants also assert that they only
17 communicated about the Plaintiff and/or interacted with the Plaintiff in their capacities as
18 attorneys. Again, this was refuted by the defendants themselves and it is obviously not
19 true given the evidence submitted by Plaintiff in her opposition. The defendants
20 conspired with separate entities to target and defame the Plaintiff. Plaintiff's opposition
21 also lays out how defendants fail to meet the standards to classify Plaintiff's lawsuit as a
22 SLAPP suit. Plaintiff has a right to gather all documentary and testimonial evidence
23 concerning these facts which are genuinely disputed and cannot be the basis of a
24 motion to dismiss under the standards of the rules. Another contention raised by
25 defendants cite that they only made their defamatory statements in a court of law, thus
26 the absolute litigation privilege applies to their statements made to third parties. Well,
27
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1 Plaintiff has clearly opposed this assertion by defendants with factual and witness
2 evidence. Defendants made nasty and untruthful statements concerning the Plaintiff
3 outside of any court of law (and, no, the Plaintiff does not only cite to the defendants
4 calling her a 'nigga' as the defamatory statement at subject outside of court, which the
5 magistrate judge also erroneously cited to—because she did not look beyond the
6 defendant's motion to dismiss). From the very beginning of these issues, defendants
7 were involved in making defamatory statements to third parties concerning unfounded
8 accusations of Plaintiff engaging in criminal activity, unfounded accusations concerning
9 Plaintiff's mental status (which truly illustrated their complete ignorance), and disgusting
10 threats made directly to the Plaintiff in the presence of third parties. Every single other
11 point made in defendant's motion is a factual contention that they have not
12 substantiated with evidence one way or another; they simply state that "they didn't do
13 it," which also clearly show that what they characterize as a "motion to dismiss," is not.
14 The defendants then add a bunch of filings as exhibits which also does not support any
15 of the factual contentions raised in their motion to dismiss one way or another (and are
16 contentious and self-serving in and of themselves) and asks that the Court take judicial
17 notice of the documents, even while requesting that discovery be stayed. In other
18 words, defendants are asking this Court to give them an unfair advantage in ruling on
19 their motions. Defendant's motions to dismiss are motions for summary judgments
20 wrongfully characterized as motions to dismiss and it is grave error for this court to rule
21 on such motions and deny the Plaintiff discovery in this matter. In fact, such a stay is
22 unprecedented, supports denial of defendant's motion, and further support that
23 evidence put forth by Plaintiff suggest that defendant's attorney-client and work product
24 assertions are subject to the crime-fraud exception. It was judicial error for the
25 magistrate judge to rule that discovery should be stayed since her "preliminary peek"
26 only consisted at looking at defendant's motions to dismiss and did not involve any type
27
28

1 of balancing of the interests of both parties. Most notably, the magistrate judge cited she
2 could be wrong. Her "unsure" order presents a prejudice to the Plaintiff. During the time
3 that Judge Foley's orders were in effect, the Plaintiff sought discovery from key
4 witnesses (not all witnesses) and sought key documentary evidence; defendants did not
5 and cannot cite to any extreme burden that this discovery, which was limited at that
6 point in time, imposed.

7 Based on all of the facts and case law before the court, including the fact that
8 discovery had already commenced, Plaintiff requests that the order of magistrate judge
9 Yuchah be vacated and that the stay be lifted on an emergency basis in order to
10 discontinue the gross amount of prejudice that it has already caused to the Plaintiff.
11 Plaintiff also requests that the motions that were set before the magistrate judge be
12 decided by the trial judge and/or remanded to the magistrate judge for further action.
13

14 Dated this 14th day of October 2019

15 /s/ Latonia Smith
16 LATONIA SMITH
17 9748 CANYON LANDING
18 AVE.
19 LAS VEGAS, NV 89166
20
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CERTIFICATE OF SERVICE

I certify that I am serving a true and correct copy of the attached MOTION TO VACATE
MAGISTRATE JUDGE'S ORDERS AND LIFT STAY on the parties set forth below by:

_____ placing an original or true copy thereof in a sealed envelope with the correct prepaid
postage affixed for collection and mailing in the United States Mail, at Las Vegas,
Nevada.

 X Certified Mail, Return Receipt Requested of the document(s) listed above to the
person(s) at the address(es) set forth below

_____ E-service

_____ Personal delivery through a process server of the document(s) listed above to the
person(s) at the address(es) set forth below

Alex Fugazzi and Michael Paretti

SNELL AND WILMER

3883 Howard Hughes Parkway Suite 1100

Las Vegas, NV 89169

702-784-5200

afugazzi@swlaw.com

mparetti@swlaw.com

 /s/ Latonia Smith
Plaintiff, In Proper Person

Dated this 14th day of October 2019

EXHIBIT 1

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
LAS VEGAS DIVISION

LATONIA SMITH,)	CASE NO: 2:19-CV-00824-GMN-EJY
)	
Plaintiff,)	CIVIL
)	
vs.)	Las Vegas, Nevada
)	
FENNEMORE CRAIG,)	Wednesday, September 25, 2019
)	
Defendant.)	(1:04 p.m. to 2:15 p.m.)

MOTION HEARING

BEFORE THE HONORABLE ELAYNA J. YOUCHAH,
UNITED STATES MAGISTRATE JUDGE

Appearances: See next page

Court Recorder [ECRO]: Digital

Courtroom Administrator: E. Garcia

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P.O. Box 8365
Corpus Christi, TX 78468
361 949-2988

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EXCEPTIONAL REPORTING SERVICES, INC

APPEARANCES FOR:

Plaintiff:

**LATONIA SMITH, PRO SE
9748 Canyon Landing Ave.
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Defendant:

**ALEX FUGAZZI, ESQ.
MICHAEL PARETTI, ESQ.
Snell & Wilmer
3883 Howard Hughes Pkwy., Suite 1100
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**RILEY A. CLAYTON, ESQ.
Hall Jaffe & Clayton
7425 Peak Drive
Las Vegas, NV 89128**

**JEROME R. BOWEN, ESQ.
9660 W. Cheyenne Ave., Suite 250
Las Vegas, NV 89129**

Las Vegas, Nevada; Wednesday, September 25, 2019; 1:04 p.m.

(Call to Order)

THE CLERK: This is attendance in the case of 2:19-CV-824-GMN-EJY, Latonia Smith versus Fennemore Craig.

Counsel, please enter your appearance for the record.

MR. FUGAZZI: Good morning, your Honor, Alex Fugazzi and Michael Paretti on behalf of Fennemore Craig and the seven Fennemore Craig employees that are subpoenaed by plaintiff. And I have with me my client representative, Janice Proctor-Murphy (phonetic) who is the assistant general counsel of Fennemore.

THE COURT: Thank you. And you are, I assume, Ms. --

MS. SMITH: Yeah, I'm the plaintiff. Yes.

THE COURT: Okay. Well, we have before us today a variety of motions that have been filed by the parties. And I think that the best way to go through this to make the record clear is motion by motion. Although I do understand that that will take some time, I'd rather make sure that the record is clear and that everybody has had an opportunity to provide me with the information if they would like to do so.

So we will start with the Motion to Stay filed by the defendants. And Mr. Fugazzi, are you going to be arguing?

MR. FUGAZZI: Yes, your Honor, I am.

THE COURT: Okay. And I have read everything. I do understand the issues that are before the Court, thoroughly

1 read all of the pending motions and exhibits, and have looked
2 at the complaint. So -- and the amended complaint, so I have
3 that ground. You don't need to come up to the podium. But if
4 there's anything you'd like to add or emphasize to the Court
5 regarding your Motion to Dismiss, I'm happy to listen to that.

6 **MR. FUGAZZI:** Thank you, your Honor. The Motion to
7 Stay -- and I appreciate your telling me in advance as I
8 expected, you had read everything. I will not go through all
9 the briefs.

10 The Motion to Stay requires a sneak peek analysis for
11 the Court which requires a look at the Motion to Dismiss to
12 determine whether or not there is a likelihood that the dispute
13 could be resolved in its entirety if the Motion to Dismiss is
14 granted.

15 So I wanted to very briefly touch on a few highlights
16 of that standard, your Honor, because I understand it is our
17 burden and there are several grounds under which I think the
18 Court should be convinced that the Motion to Dismiss can be
19 resolved in its entirety and in the interim the case should be
20 stayed.

21 The two overarching defenses really are the anti-
22 SLAPP and the litigation privilege. And that covers the bulk
23 of the allegations in plaintiff's complaint. And to the extent
24 either of those defenses -- or they're actually immunities, the
25 extent either of those immunities don't apply. The individual

1 claims themselves fail under 12(b)(6) standards.

2 So the anti-SLAPP as you know provides for immunity
3 for civil liability based on good faith communications. And
4 the right to petition and issues of public concern and judicial
5 proceedings are in fact considered issues of public concern
6 under NRS 41.650.

7 So the filings, the proceedings, the petitions, all
8 the things surrounding the underlying litigation -- and not
9 just this dispute and not just the prior disputes with
10 Ms. Smith, but also the disputes with her mother that Fennemore
11 Craig has been defending Caesar's Planet Hollywood in the
12 underlying litigation.

13 And if you look at her own complaint in paragraph 6,
14 she defines the alleged improper conduct by Fennemore Craig as
15 occurring in the confines of her mother's litigation, paragraph
16 6 says, "during the course of this litigation that began on
17 November 5, 2018, employees of Fennemore Craig began harassing,
18 intimidating, and defaming Ms. Smith who is a witness in the
19 current pending litigation."

20 So clearly squarely within the context of the anti-
21 SLAPP statute, and I think that also is helpful to pivot when
22 looking at the equally broad litigation privilege that applies.
23 And there's a slew of cases, probably the Greenberg Traurig is
24 the most seminal one on that, but that Court really emphasized
25 the breadth of that privilege and how it applies to attorneys

1 participating in judicial proceedings and granting those
2 Officers of the Court the utmost freedom in their efforts to
3 obtain justice for the clients.

4 And again, paragraph 6, I think is equally helpful to
5 both the anti-SLAPP and the litigation privilege defense
6 because by her own allegations the alleged improper conduct all
7 occurred within the confines of litigation, the Parazar
8 (phonetic) litigation.

9 But the claims themselves individually fail as well.
10 And very briefly, the conspiracy claims, there's only one
11 defendant in this lawsuit, it can't be a conspiracy with one
12 defendant. And the Case Law we cited for you supports that
13 proposition even if you allege individual employees within the
14 one defendant or agents such as lawyers of that one defendant,
15 it can't conspire. So the conspiracy claim, even putting aside
16 the anti-SLAPP and litigation privilege, fails on that ground.

17 Similarly the slander and defamation claims also fail
18 on a 12(b)(6) standard. I know, Judge, that you can't take --
19 and we're not going to dispute fact issues, but I would be
20 remiss if I didn't say again on the record that Fennemore Craig
21 and the seven individuals who have been subpoenaed adamantly,
22 adamantly deny ever making any type of racial slur to Ms. Smith
23 in lieu of the allegation of the complaint.

24 I understand that's not here for you decide that,
25 Judge, but because of the explosive nature of those comments, I

1 really would be remiss if I didn't at least make that record.
2 So I'll move on from that and I appreciate you allowing me to
3 make that statement.

4 Their allegations of the settlement agreement being
5 produced improperly and in violation, but under the terms of
6 the settlement agreement themselves, there are times -- this is
7 still under the slander and defamation to the extent the claim
8 is based upon disclosure of a settlement agreement. The
9 settlement agreement within the definition and confines of the
10 settlement agreement itself allow it to be disclosed under
11 certain circumstances, and the alleged disclosure that occurred
12 in March of 2019 was equally within litigation.

13 In fact, this cover letter -- and that's going to be
14 the subject of another motion before the Court because it's our
15 position that that is a fabricated document. But again, even
16 if you take that document on its face, that is within the
17 confines of the underlying Parazar - Caesar's litigation. The
18 folks who were provided with the cover letter and that
19 agreement were lawyers. They were all lawyer either in the
20 mother's litigation or lawyers defending Caesar's.

21 So the intentional infliction of emotional distress
22 claim, the last one, also again fails on its own. We cited for
23 you cases that although abhorrent the language that Ms. Smith
24 alleges my client used, which again it did not -- do not
25 constitute intentional infliction of emotional distress.

1 The last thing I'll point out to you, your Honor, and
2 then I'll stop unless you have questions for me, is I would
3 suggest that looking at the anti-SLAPP statute itself might be
4 -- give you some guidance as to whether or not a Stay should be
5 granted.

6 I understand very clearly that Ninth Circuit says the
7 procedural requirements of the SLAPP statute are not binding
8 upon Federal Courts, and I'm not saying that the SLAPP statute
9 is. But NRS 41.6603(e)(1) provides that if a special Motion to
10 Dismiss is filed pursuant to subsection 2, the Court shall Stay
11 discovery pending ruling by the Court's own motion.

12 Again, I know that doesn't directly apply to you,
13 that's not binding on you, but I think it's helpful to see how
14 the Nevada legislature contemplated the anti-SLAPP statutes
15 when such a motion was brought how its citizens would be
16 protected and how the Stay would be an option.

17 And in State Court it would be an easy argument for
18 me to simply say shall or shall, your Honor. But I understand
19 I'm not in State Court.

20 So with that, unless the Court has any questions for
21 me?

22 **THE COURT:** I don't have any questions for you.
23 Thank you.

24 **MR. FUGAZZI:** Thank you.

25 **THE COURT:** Ms. Smith, do you want to be heard on

1 your opposition to the Motion to Stay Discovery which was filed
2 by defendant?

3 **MS. SMITH:** Yes. But do I have to stand or can I
4 sit?

5 **THE COURT:** You can sit. That's fine.

6 **MS. SMITH:** Cool. So I opposed their motion because
7 I feel like they're trying to hide behind their title as
8 attorneys.

9 But basically when it comes to the Motion to Dismiss
10 what I replied is that a lot of the issues in the Motion to
11 Dismiss are factual contentions, number one, that I feel
12 requires discovery.

13 **THE COURT:** Ms. Smith, I'm just going to interrupt
14 you. I may have said Motion to Dismiss. I meant Motion to
15 Stay. If I misspoke, I apologize. Their Motion to Stay
16 Discovery.

17 **MS. SMITH:** Okay.

18 **THE COURT:** So --

19 **MS. SMITH:** And he just argued like some of the stuff
20 in the Motion to Dismiss --

21 **THE COURT:** Well he was --

22 **MS. SMITH:** -- so I was going to respond to it.

23 **THE COURT:** -- he was talking about the underlying
24 claims, but I am not going to decide the Motion to Dismiss
25 today. I just want to make sure you understand that.

1 **MS. SMITH:** Yes.

2 **THE COURT:** He'll -- okay. Then go ahead.

3 **MS. SMITH:** So with my case, number one, I'm not a
4 part of my mom's litigation, and they keep trying to tie me to
5 that.

6 But everything that happened, the defamation, the
7 slander, the distribution of the settlement agreement, all of
8 that is outside of my mom's case. And really when I -- when I
9 say that they were conspiring, meaning it was themselves and
10 Caesar's and Planet Hollywood that conspired to target me.

11 And that was all in an attempt to fire my mom and/or
12 prevent her from getting her job back. So they used me to
13 create, you know, these anonymous messages, I guess, and that's
14 when the attack against me began with them using the judicial
15 system to target me. That's basically the overview of what the
16 lawsuit is about.

17 As far as the Motion to Stay Discovery that
18 Mr. Fugazzi filed, basically he just says that the motion
19 should be -- I mean, the motion should be granted because they
20 would incur costs and that there's a pending Motion to Dismiss
21 on the table.

22 But both of those are not reasons to stay discovery
23 and that was talked about a little bit in the -- in the Trade
24 Bay (phonetic) case and in the Turner case from Nevada 1977,
25 where the Court rejected the argument that a Motion to Stay

1 should be granted because the other party might incur costs.
2 And that's basically in their motion. What they argue is that
3 because I want to take the deposition of the seven individuals
4 that were involved or mostly involved, that discovery should be
5 stayed because they would incur costs associated with that.

6 And like I said in my opposition to their Motion to
7 Dismiss, their Motion to Dismiss is just filled full of factual
8 contentions. All they say is, "Oh, we didn't do that." So I
9 make a claim, and they basically say, "No, they didn't do it."
10 But they don't present any evidence to oppose my claims which I
11 do.

12 **THE COURT:** Your motion, number 31, is the next
13 motion on the calendar which is a Motion to Compel Discovery.

14 **MS. SMITH:** Correct.

15 **THE COURT:** You mentioned some of that in what you
16 just said. Would you like to argue that motion now, tell me
17 why you believe that motion should be granted?

18 **MS. SMITH:** Yes. So the Motion to Compel Attendance
19 at Deposition is for the -- some of the Fennemore employees.
20 And then I think the other -- there is other Motions to Compel
21 on that, but as far as the Fennemore employees' Motion to
22 Compel on -- so Fennemore was the one involved with Caesar's
23 with creating these documents that they have been distributing
24 and using to get TPOs against me, to defame me, basically
25 saying that I, you know, distributed threats.

1 And some of these -- some of these defamation claims
2 that they made about me were outside of any type of litigation.
3 Like I said, I'm not involved in my mom's litigation, and as
4 shown in the exhibit I'm not even mentioned in my mom's
5 litigation. So they took it upon themselves to bring me into
6 that litigation later on, which that's another issue.

7 But as far as compelling the employees that were
8 involved, they were the ones involved in distributing the --
9 either the agreements which the -- another thing about the
10 agreement, the agreement does not provide for them to -- they
11 didn't provide for them to distribute it whenever they saw fit.
12 There were other aspects of the agreement which stated that
13 before they even distributed such an agreement to whoever,
14 which it would only -- it should have only been to a Court.
15 But before they even distributed such an agreement they had to
16 contact my attorney who represented me in that matter, and
17 present evidence showing that those -- what they were saying or
18 what they were trying to get was actually factual. So that --

19 **THE COURT:** Tell me why these seven people should be
20 compelled to attend depositions when they are not parties to
21 this case?

22 **MS. SMITH:** So I believe -- so Ms. Pierce, she was
23 one of the employees of theirs that went ahead and distributed
24 the confidential settlement agreement. She also sent a letter
25 to my mom's previous attorneys, I'm not sure why, but she sent

1 a letter basically saying that I'm a danger, that I've issued
2 threats in the past, those type of things which I consider
3 defamation. That was Shannon --

4 **THE COURT:** Can you tell me about Leslie Bryant-Hart
5 (phonetic) Janice Proctor-Murphy (phonetic)?

6 **MS. SMITH:** Yes, Leslie Bryant-Hart and Janice
7 Proctor-Murphy, so they were involved in the -- so I guess if
8 he doesn't want to call it conspiracy or whatever, Shannon
9 Pierce is the one who initiated it. She called her other
10 members of her firm in Reno, told them to go file a TPO against
11 me based on another one of their anonymous letters that they
12 created.

13 Leslie Bryant-Hart and Janice Proctor-Murphy were
14 involved in basically getting or helping Shannon Pierce, Wade
15 Beavers (phonetic) and some of their other employees to go
16 ahead and get a TPO based off of messages that they created and
17 you know, the statements that they made concerning the fact
18 that I was a threat, that I sent threats in the past, that I'm
19 a danger, stuff like that.

20 **THE COURT:** And would -- is that the same argument
21 you would make with respect to Bernak Ruben Worthland
22 (phonetic), Shanna Brazelton (phonetic), and Randy Planet
23 (phonetic), and Wade Beavers?

24 **MS. SMITH:** So I dropped the one against Wade Beavers
25 for now because there's other things going on.

1 **THE COURT:** What's going on?

2 **MS. SMITH:** So I dropped that one. But --

3 **THE COURT:** What about the other three?

4 **MS. SMITH:** So Bernak Worthland and the other lady,
5 I'm not -- I can't remember her name --

6 **THE COURT:** Shanna Brazelton?

7 **MS. SMITH:** So Shanna Brazelton, she was involved in
8 the Reno one.

9 The other -- the other two, they were involved in the
10 2017 Las Vegas one where they had their employees or whatever,
11 create messages so that they could basically defame me, get
12 TPOs against me that -- and all of this is based -- I -- all of
13 this was because they wanted to fire my mom and/or prevent her
14 from getting her job back. And so that's the issues that
15 Fennemore and Caesar's conspired with one another to do that.

16 **THE COURT:** And then tell me, in this Motion to
17 Compel you also seek documents from the law firm Fennemore
18 Craig, recall that?

19 **MS. SMITH:** Yes, the production of -- I basically
20 just asked for any documents in their possession from 2017 to
21 now because 2017, November of 2017 is when this whole thing
22 began really to present. And I sought documents either
23 pertaining to myself specifically, meaning my name, my social,
24 whatever information they have on me, and/or documents
25 pertaining to my mom.

1 Since I was brought into this because of them wanting
2 to go ahead and fire my mom and prevent her from getting her
3 job back, that is why I sought the documents from specifically
4 2017 to now, currently. I am not seeking documents before
5 then.

6 I -- you know, they make an argument that it's broad
7 and it's, you know, a burden for them to get those documents,
8 and it's really just hollow arguments. I think one of the
9 arguments they made is attorney/client privilege. And I
10 specifically asked about this, like, how can you assert a
11 privilege over documents that you don't know, that you haven't
12 reviewed. And they didn't say anything, they just -- they're
13 just asserting a broad -- they're asking for a broad protective
14 order and asserting a broad privilege over any documents, you
15 know, that have to do with myself and my mom.

16 **THE COURT:** Mr. Fugazzi, I -- if you want to add
17 something to this motion, you can, but if you'd like to move on
18 to your Motion to Quash or in the alternative for a protective
19 order, that would be fine.

20 **MR. FUGAZZI:** I think it makes sense, your Honor, for
21 me in one sitting or one stand to take on both because they're
22 very similar, if that's okay with the Court?

23 **THE COURT:** Okay.

24 **MR. FUGAZZI:** The briefs, and I believe what you just
25 heard from plaintiff, reaffirm our belief that what she is

1 asking for are active litigation files from the law firm.

2 She's asking for the active litigation file in her
3 mother's law suit with Caesar's, and she's asking for the
4 litigation file surrounding all the TPOs that we just walked
5 through. That's the involvement of the Fennemore lawyers.

6 She wants active litigation files that are clearly
7 privileged, that are clearly subject to work product. And
8 other than a 22 month time range, there's nothing really done
9 to limit the scope of those. There's no effort to try and
10 exclude privileged or work product documents. In fact, when
11 you look at the subpoenas themselves they reference requests
12 for materials that have to do with the matters listed in the
13 lawsuit which are related to Latonia Smith or her mother,
14 Anasar (phonetic) Parazar.

15 The face of the subpoenas themselves are asking for
16 privileged work product protection. The other part of the
17 subpoenas are asking for forensic copies and images of personal
18 computers and personal cell phones of all of the seven
19 Fennemore witnesses.

20 Three of those people that she's asking for have
21 already secured temporary protective orders against her. So in
22 other words, she is asking the very people that a Court agreed
23 with us that she had threatened to turn over a forensic image
24 and a forensic copy of their personal computers, their personal
25 cell phones. And all of us know the layers of relevant and

1 personal information that's contained in a cell phone that most
2 of us would not want to turn over to anyone, never mind a
3 litigant, never mind someone who we have a good faith basis to
4 believe they either physically threatened or worse to them.

5 So that's what's being asked here, active or dormant
6 litigation files of a law firm. The arguments that these
7 requests are somehow tailored or narrowed is just not reflected
8 in the subpoenas or the briefs themselves. There's a reference
9 to an identification of a forensic examiner, but there's no
10 identity of who that person would be. There's a general
11 discussion of possible search terms, but those search terms
12 aren't disclosed.

13 And then there's a reference that the privilege will
14 be protected. But when you read the briefs and you hear the
15 argument, there's no effort to protect privilege. Ms. Smith
16 doesn't believe there is a privilege. She believes the crime
17 fraud exception applies and that as a result there simply is no
18 privilege.

19 But that's a burden on her. That's a preponderance
20 of the evidence standard, the crime fraud exception, that
21 requires her to actually show with evidence that there is an
22 ongoing or future crime that a client is using a lawyer to help
23 perpetrate. And there's no evidence of that fact. Argument
24 and speculation don't equal evidence, your Honor.

25 So the other issue about her comments that we didn't

1 -- we don't know what documents exist, I think that was a
2 comment that another lawyer made to her not me. Because my
3 efforts to meet and confer with her never came to fruition. We
4 did not meet and confer because I had requested that
5 Mr. Clayton, counsel for Caesar's be there.

6 The bulk of the privilege she's asking for is
7 Caesar's privilege. Caesar needs to be involved in the
8 evaluation of any privilege. And to be clear, Caesar's has
9 made clear to me that they are not waiving privilege or any
10 other protection that they have.

11 And then also, your Honor, Rule 45(d)(1) puts the
12 onus on the subpoenaing party to make sure that it is not -- it
13 says that this party has to take steps to avoid imposing undue
14 burden or expenses on the parties subject to the subpoena. And
15 it can apply a sanction if those efforts are not met.

16 So it is not -- I think that's the prism from which
17 the Court needs to look at this. It can't be for us to prepare
18 a privilege log on an entire litigation file when there's been
19 no effort whatsoever to try and narrow the scope and the burden
20 of the subpoena as Rule 45(d)(1) requires.

21 Similarly, 45(d)(3)(a)(3) provides that the subpoena
22 must be quashed if it "requires disclosure privilege or other
23 protected matter".

24 So that's why we're before the Court. I know there
25 have been some allegations that we were in violation of

1 thumbing our nose at Judge Foley's orders. That's simply not
2 the case. We took pains to send a lengthy letter, meet and
3 confer letter, before the first deposition of the first
4 production was made available. We moved to -- we filed our own
5 motion. Ms. Smith also filed her own motion as well.

6 So that really is the quash arguments. To the extent
7 the Court is considering any of these depositions going forward
8 in any fashion, we would request that a protective order is
9 required. These are people who have legitimate concerns about
10 being in the same room with Ms. Smith, and the Court has
11 options from written depositions, to video, to telephonic, to
12 allowing it to occur in court when -- where you have
13 protections that I simply don't have in conference rooms or
14 court reporters.

15 So in a nut shell, this to me is not the type of
16 subpoena that can really be modified by the Court, you know,
17 where there's eight requests, three of which are too broad so
18 you strike those, you narrow two of them and we go. This just
19 is overly broad from the beginning to end, and I don't -- I
20 don't think there's a way for the Court to modify. I think
21 these have to be quashed.

22 **THE COURT:** Thank you, Mr. Fugazzi. Ms. Smith, do
23 you want to respond? This is, again, on the defendant's Motion
24 to Quash and Seal and for a protective order. There --

25 **MS. SMITH:** Yeah, so their emergency Motion --

1 **THE COURT:** They're numbers 36 --

2 **MS. SMITH:** -- to Quash?

3 **THE COURT:** -- 37, and 38.

4 **MS. SMITH:** Okay. I don't think I got 36 from the
5 defense and I didn't see UFC -- ECF, is that what it's called?

6 **THE COURT:** But they're all related and you may not
7 have gotten some sealed documents, but the --

8 **MR. FUGAZZI:** It was mailed.

9 **THE COURT:** -- the import of the motion, I think you
10 are familiar with through the Motion to Quash, you were
11 seeking?

12 **MS. SMITH:** Yes, they want to quash the subpoena,
13 basically preventing me from getting evidence that's at the
14 heart of this case.

15 And I also filed a motion, a response to them asking
16 for injunctive relief in a protective order because they seek
17 to continually include my medical history. Now they're
18 including it as an excuse to prevent me from either doing
19 depositions or getting the documents that's at the center of
20 this case.

21 Just to point out, when Mr. Fugazzi emailed me to do
22 a meet and confer over the subpoenas, most of his objections
23 were attorney/client, work product, those type of things.

24 And then in his emergency motion, now he throws in my
25 medical records to say, "Oh, look, she's crazy, we don't want

1 her taking depositions or getting documents." That's basically
2 the argument that he was making which I find highly, highly
3 inappropriate.

4 But as far as the subpoenas being able to take the
5 depositions of the seven people who were involved, which I
6 believe in creating these messages and defaming me, I think
7 that's necessary, that's important. And I don't see any
8 grounds -- and I haven't heard any grounds for which I should
9 be prevented from questioning these seven individuals who were
10 either involved in creating documents or -- and/or involved in
11 trying to use the Court to -- or abuse the court system to
12 target me in 2017 and thereon, and even still today.

13 As far as the -- he made an argument about the crime
14 -- or he brought up the crime fraud exception that I argued.
15 And I did present evidence to -- at least some evidence that I
16 have my hands on at this moment to kind of show that Caesar's
17 and themselves, Fennemore Craig, were involved in what I would
18 consider a crime and a fraud on the Court in trying to target
19 me, namely in creating messages.

20 And I believe in the exhibits to the opposition to
21 the Motion to Dismiss, there is testimony from a third-party
22 individual citing that the parties contacted her telling her
23 that I was sending these messages that they created themselves,
24 and that I was threatening others.

25 And then there's an audio, an internal audio from, I

1 believe, their defendants, Caesar's, basically stating that
2 they would target me and saying that I created these messages,
3 same thing, the defamation.

4 And so for me not to be able to depose their
5 attorneys who were involved in creating the messages, I think
6 that's just wrong and I didn't see any grounds for --

7 **THE COURT:** Tell me, you filed a motion, and it's
8 number 43, seeking to compel the depositions of Ms. Radak and
9 Ms. Gianini.

10 **MS. SMITH:** Right.

11 **THE COURT:** Why don't you explain to me what the
12 basis for that is?

13 **MS. SMITH:** So Ms. Radak and Ms. Gianini, so they
14 were involved in -- I basically I believe Ms. Radak is my mom's
15 former boss and right after she was -- or they used the
16 messages basically to further -- to terminate her and then to
17 prevent her from getting her job back. And how they did that,
18 I have no idea.

19 But Ms. Radak contacted that third party. That third
20 party testified to that, that Ms. Radak specifically contacted
21 her and other members of Caesar's Entertainment which is in
22 another separate case. But that they contacted her to
23 basically state that I was the one sending these messages,
24 blah, blah, blah, blah

25 Well, Samantha Radak was involved with conspiring

1 with Fennemore Craig because they helped her to get the
2 messages and then secure the TPO against me. I'm not sure how
3 they did that with anonymous messages but that's another issue.

4 And then -- and then Fennemore Craig helped them with
5 also filing a lawsuit against me putting me in a lawsuit, again
6 based off of the anonymous messages and 50 doe defendants. So
7 that was, like I said, a huge burden on me trying to defend
8 that.

9 And so Samantha Radak and Deborah Gianini were
10 involved in that earlier scheme in 2017 which involved creating
11 the messages, targeting me, and all this was surrounding or at
12 the heart of my mom not getting her job back and/or being
13 terminated.

14 And then he briefly mentioned about the document
15 requests that I did, that they were broad or subject to their
16 attorney/client privilege, which I didn't quite finish the
17 crime fraud argument with them creating the messages and then
18 using those messages to secure TPOs, which is in furtherance of
19 a fraud. The crime fraud exception to attorney/client
20 privilege, which is why I'm seeking partly, documents, anything
21 that concerns myself, number one and/or my mom starting in 2017
22 when that crime fraud began up until now.

23 Because a few months ago they did, you know, I guess
24 revamp or restart this whole TPO thing with targeting me and
25 getting the courts here in Reno, and as I stated in my motion,

1 I'm sure if I didn't file a lawsuit it would have been at where
2 -- at the locations that their firms are located, meaning
3 Arizona and other places because they conspired and asked their
4 employees to begin filing TPOs against me.

5 So that is in furtherance of a fraud. That is why I
6 asserted the crime fraud exception to any attorney/client
7 privilege that they are now trying to claim to prevent me from
8 getting evidence that might implicate them in the fraud that
9 has occurred since 2017.

10 So I don't believe those documents are privileged at
11 all. Any documents concerning myself, any documents concerning
12 my mom because I'm connected to her, I don't believe that those
13 are privileged in this case especially where the heart of the
14 case really is about, you know, the defamation, about them
15 creating documents, about them distributing confidential
16 settlement agreement which their prior TPOs and their prior
17 lawsuit was dismissed.

18 So all of that is at the center of the -- of this
19 current lawsuit. And so to tailor it anymore means that I
20 don't get evidence that is at the heart of this case, meaning,
21 you know, there -- how much more can you tailor it? I'm asking
22 for documents concerning just myself, my mom, from 2017 to now.

23 And another thing he brought up was the protocol. I
24 was going to discuss it more in detail with Mr. Fugazzi at a
25 meet and confer. I told him I will not confer with Mr. Clayton

1 because Mr. Clayton is representing Caesar's in a separate case
2 that has really nothing to do with this case.

3 And at the meet and confer I was going to further
4 specify what the protocols would be or the ones that I came up
5 with. And basically how I did that is I looked at other
6 jurisdictions and other courts and the protocols that they
7 implemented when a plaintiff or a defendant has requested
8 forensic examination of computer evidence or cell phone
9 evidence, things of that nature.

10 There are specific protocols that can be followed
11 that, you know, where, you know, I'm not going to get -- not
12 that I even care, but documents concerning other people or
13 documents that don't fall into the scope of concerning myself,
14 my mom from 2017 to now. I mean, there are parameters that a
15 forensic examiner can, you know, just specifically search for
16 those documents that are in their possession.

17 And the reason that I wanted a forensic examination
18 is number one, these people are creating documents in my humble
19 opinion, and number two, then they're using these documents to
20 then petition courts for TPOs, for lawsuits, things of that
21 nature.

22 And so the evidence really at the heart of this case
23 is contained in either their phones that they used, you know,
24 to conduct their work, and/or the computers that they used to
25 conduct their work and communicate with other third parties who

1 were involved. I can't remember --

2 **THE COURT:** Mr. Fugazzi, an opportunity to respond --

3 **MS. SMITH:** Sure.

4 **THE COURT:** -- to your arguments regarding motion --
5 ECF number 43, which is Ms. Smith's Motion to Compel the
6 Depositions of Ms. Radak and Ms. Gianini, if there's anything
7 else you want to add, that's fine, but --

8 **MR. FUGAZZI:** Your Honor, actually Mr. Clayton is
9 counsel for Radak and Gianini, so I think those are probably
10 arguments best left for -- he has briefed the issue, he was the
11 one who moved, and it's probably best for him to respond to
12 those.

13 **THE COURT:** Certainly. To the extent that you feel
14 is necessary, I'm happy to listen.

15 **MR. CLAYTON:** Your Honor, I appreciate your comments.
16 It's a quick one. May I approach the podium for --

17 **THE COURT:** Certainly.

18 **MR. CLAYTON:** Okay. I'll just take --

19 **MR. FUGAZZI:** Just take my seat.

20 **MR. CLAYTON:** No, that's all right. Thank you. Your
21 Honor, just a couple of quick points.

22 **THE COURT:** You can come to the podium please.

23 **MR. CLAYTON:** That all right? Okay. Thank you.

24 **THE COURT:** Mm-hmm. Yes.

25 **MR. CLAYTON:** I appreciate that.

1 **THE COURT:** I'm sorry I couldn't tell that you
2 weren't up there.

3 **MR. CLAYTON:** All right. I'm not sure if there's an
4 issue on this, but I think she raised it in her briefs that
5 there was an untimeliness issue on filing the written objection
6 or the Motion to Quash. The rule says that you get the earlier
7 of 14 days from the time of the service or up to the time when
8 you're supposed to have compliance, and we complied with that.
9 So I just want to make sure that the dates are accurate.

10 Now, what's different -- I appreciate the arguments
11 of counsel and I'm going to join them because they inure to our
12 benefit. In this particular case here, I represent Ms. Radak
13 and Ms. Gianini, the deponents.

14 What's unique for my client, at least one of them, is
15 the existence of the settlement agreement. Now in the
16 settlement agreement that she signed, and it occurred after the
17 -- when she said she was involved in a lawsuit, well that
18 lawsuit resulted in a no contact agreement between her,
19 Ms. Radak, and my other defendants in the other case. So now
20 she's being selective as to how to enforce that particular
21 document.

22 It says thou shalt not come within 100 feet of my
23 clients. Yet then it said by service by agent or otherwise.
24 So it is pretty broad the nature of the no contact prohibition.
25 By serving these subpoenas on my client, that's -- they've

1 already violated that particular provision. She suggested it's
2 somehow unenforceable yet cites to no case or no legal
3 authority to support that position.

4 **MS. SMITH:** It's in the document itself.

5 **THE COURT:** It's all right, Ms. Smith, I'll give you
6 an opportunity to respond to what Mr. Clayton has to say. So
7 why don't you let him speak uninterrupted as they have allowed
8 you to do. Thank you. Go ahead.

9 **MR. CLAYTON:** Thank you, your Honor.

10 The agreement itself says it's going to be governed
11 by Nevada law. Nevada law under Rule 65 allows for injunctions
12 or temporary restraining orders to be issued day in and day out
13 when there's a potential harm that can come to somebody. That
14 was -- that was the consideration that my clients were seeking
15 in having this particular document, this settlement agreement
16 reached in this case. They wanted freedom from being harassed
17 and being pursued and being intimidated. That was the
18 consideration of the agreement.

19 The severability clause in that agreement, and I
20 think we pointed this out pretty vividly, it says, "If some of
21 these provisions are declared unenforceable, it can only happen
22 if it doesn't undercut the essence of the contract." And the
23 essence of the contract here is to give my clients some
24 protection from the threats, the intimidation, and the
25 harassment. So this agreement is enforceable. It would

1 preclude the type of conduct she is seeking here through the
2 court issued subpoena at least through December 1. That's when
3 the timeframe --

4 **THE COURT:** I've heard the --

5 **MR. CLAYTON:** -- ends on that. So I appreciate that,
6 Judge.

7 **THE COURT:** (indisc.)

8 **MR. CLAYTON:** The other issue that I want to hit,
9 there was the suggestion that I hadn't seen the documents and
10 yet I was making objection of attorney/client privilege.

11 She is correct that I have not been living and
12 breathing this unfortunate case for two years like she has. So
13 I am unaware of the volumes of documents that may exist. But I
14 do know that my client was previously represented by the
15 Fennemore Craig team in the Parazar versus Fennemore -- or
16 excuse me, Parazar versus the Caesar's Entertainment and Planet
17 Hollywood matters. That by its very nature and given the
18 specific language of the documents she's seeking in this
19 subpoena would be protected by the attorney/client privilege.

20 Third point and the work product document. One of
21 the points that I've raised and I want to simply reiterate
22 here, and I think it's been reconfirmed in a very acute
23 fashion, that these cases are inter-related, and that the
24 information she is seeking through the deponents and my clients
25 and the other various deponents in this case would be

1 absolutely duplicative of what she's seeking in the
2 concurrently pending Smith versus Caesar's Entertainment Planet
3 Hollywood case which is the companion.

4 Now the Court has allowed these to come to Judge
5 Navarro as a single. There are motions to consolidate pending.
6 We have joined those and the parties have outlined in specific
7 detail the interrelatedness between those two.

8 We think it would be a waste of judicial, client, and
9 personal resources to allow this type of discovery to move
10 forward when there's those types of motions that are pending
11 that can resolve a lot of this particular -- the state of
12 affairs that we're finding ourselves here today.

13 We joined that motion to consolidate. We think that
14 there's clearly ample room. She argues that it may not. She
15 believe that it doesn't exist, but there's point by point
16 allegations of each complaint identified.

17 We have likewise filed motions to dismiss and anti-
18 SLAPP motions in the related case. Those motions are
19 dispositive in nature. She's also filed a Motion for Remand in
20 the other case. So if all these cases are consolidated and
21 those motions are pending, I think there would be a
22 considerable conservation, and the court has seen the
23 extensiveness of the documents --

24 **THE COURT:** It has.

25 **MR. CLAYTON:** -- by respectfully placing a hold on

1 what she's seeking in this case so that Judge Navarro and the
2 other magistrate or however it's going to be resolved can
3 resolve these issues.

4 Our clients can take a breath and allow for the Court
5 to do what it needs to do in these particular situations. So I
6 think there's clearly the economics and those things that
7 motions to consolidate are trying to conserve, they're being
8 sidestepped or pushed away by the arguments that the plaintiff
9 is advancing.

10 Thank you, your Honor.

11 **THE COURT:** Thank you. Ms. Smith, please feel free
12 to respond.

13 **MS. SMITH:** Okay. Yes, I wanted to talk about the
14 agreement that -- really he was arguing about Ms. Radak because
15 there is an agreement, "Oh, okay, stay away from this person
16 that you don't know for -- until December 1, 2019." And sure
17 that was signed, but there's also a part in the agreement that
18 allows for that to be severable. There's actually two parts, I
19 believe it's number 7 and 14, I believe it's -- that it allows
20 that -- for that agreement to be severable when it -- if it's
21 in contradiction of any kind of Nevada law or judicial
22 proceeding like now with the subpoenas for Ms. Radak.

23 Even then I think it's only until December 1, 2019,
24 but I didn't see any reason why Ms. Radak who was involved
25 actually in creating her own messages can't be just -- can't be

1 deposed as to number one, how she got those messages, why she
2 distributed it, and why she spoke to another third party
3 basically accusing me of these messages before she even created
4 them.

5 So those are issues that I believe she should be
6 deposed about as well as Ms. Gianini who was involved in
7 helping her. And so this Court actually can order Ms. Radak to
8 attend deposition as well as Ms. Gianini.

9 And then like, the defense for Ms. Radak and Gianini,
10 he said he doesn't know what documents he's asserting an
11 attorney/client privilege over.

12 Even though I'm arguing for crime fraud, it still
13 goes to show that he's just trying to get a broad protective
14 order over documents that he doesn't know about. And I really
15 think the Court should deny that argument and deny his request
16 for a protection order over documents that he's never even seen
17 or had the time or whatever, the care to look at or look up.

18 Another thing that he argued is that because there
19 are other pending motions that the depositions of Radak and
20 Gianini, and I think Fennemore makes the same argument, that
21 because there are pending motions that these depositions should
22 be Stayed and not -- they shouldn't have to produce these
23 documents before these motions are decided.

24 And the thing about that, okay, Judge Foley had the
25 motions to dismiss on the table before he made the decision to

1 go ahead and allow discovery. So even with those motions on
2 the table, the motions to dismiss, those pending motions on the
3 table, he still decided, "Hey it's okay go ahead," and he, you
4 know, ordered for discovery to begin. So it began.

5 And you know, I subpoenaed the individuals who were
6 likely at the heart of the case. And the Motion to Remand
7 that's in the separate case that they're trying to consolidate,
8 it's because that lawsuit really is in the Eighth Judicial
9 District Court or it's supposed to be. They removed it here
10 because they want to get it to be heard here so they can
11 consolidate their cases.

12 Obviously there are issues with consolidation as I
13 explained. As far as you know, when you they argue that they
14 only want to consolidate it for pretrial matters but that's
15 rarely ever the case. Is that it's just consolidated for
16 pretrial matters. But like I said, that -- the Caesar's case,
17 the pending Motion to Remand, and the reason why discovery has
18 not even began in that case yet is because there was a Stay
19 filed because of the Motion to Remand.

20 And when it comes to a jurisdiction issue, usually a
21 Motion to Stay is, you know, necessary or the Courts grant a
22 Motion to Stay if it's based on venue jurisdiction, that type
23 of stuff. But when it's based on, "Oh, there -- well, there's
24 a pending motion to dismiss on the table or there's a pending
25 dispositive motion to dismiss," as it was done in Trade Bay,

1 the Courts said that a case shouldn't be Stayed just because
2 there's a dispositive motion on the table.

3 And again, their Motion to Dismiss is just laden,
4 laden with factual contentions that I point out in my
5 opposition. All of which should be resolved either by through
6 discovery, deposing the individuals gathering the documents and
7 information that are in their possession, especially the
8 documents that they created, and having the Court also consider
9 those.

10 Because honestly, I really believe that their Motion
11 to Dismiss, and it's really hard to tell because of the factual
12 contentions. And the -- then the evidence that they ask to be
13 judicially noticed by the Court, which is also improper, brings
14 up also a lot of factual contentions, again, which is resolved
15 through discovery.

16 And so they want to basically put a Stay or stop me
17 from getting those documents and doing discovery. And at the
18 same time have the Court rule on their motions which
19 essentially are summary judgment motions, or they function as
20 motions for summary judgment as well. And so they want to
21 basically hamstring me and say, "Hey, no. Not going to let you
22 depose anyone, not going to let you get documents, but rule on
23 these motions to dismiss so this case could be over." And
24 that's basically what they want.

25 **THE COURT:** Thank you. I believe the only other

1 motions that are pending are motions filed by another party --
2 or a nonparty, excuse me, law firm that was subpoenaed and some
3 individuals that -- or an individual that was subpoenaed
4 (glitch in audio) quash and a Motion to Compel and a motion to
5 hold that third party in contempt. Those parties are not here
6 today -- or they are? Okay. Sorry. I wasn't sure I was going
7 to say if there are then I'm happy to consider those as well.

8 Ms. Smith, we're talking about the documents that
9 were filed by Mr. Bowen's office, it's ECF number -- meaning
10 the file number, is electronic case file number is 52, is a
11 Motion to Quash. And then you filed in response two motions, a
12 Motion to Hold the Law Firm in Contempt and a second Motion to
13 Compel the Depositions. So I am --

14 **MS. SMITH:** Yes.

15 **THE COURT:** -- if Mr. -- are you Mr. Bowen? I'm
16 sorry. If you would like to be heard on your Motion to Quash,
17 I'd be happy --

18 **MS. SMITH:** And sorry, your Honor, I also had a
19 Motion to Strike Their Reply -- that they would --

20 **THE COURT:** On number 37?

21 **MS. SMITH:** My Motion to Strike Their Reply which
22 included new evidence, was number 50.

23 **THE COURT:** Thank you. Number 50. Right. I misread
24 my own handwriting. I will hear you on that as well. So --

25 **MS. SMITH:** Okay.

1 **THE COURT:** -- why don't you go ahead since you had
2 come up, Mr. Bowen.

3 **MR. BOWEN:** Thank you, your Honor.

4 **THE COURT:** Okay. Plaintiff (indisc.)

5 **MR. BOWEN:** Your Honor, I don't have much to add. I
6 -- going in the arguments of my learned counsel, we -- this --
7 these two matters are related. Your nonparties to either of
8 them or to both of them rather and we represented Ms. Parazar
9 for literally weeks, and two or three of those weeks we were
10 attempting to withdraw. No good deed goes unpunished.

11 But since that time we have been asked to -- we have
12 been -- we have received, Mr. Trout (phonetic) and myself, have
13 received subpoenas that are completely broad. They want to
14 come on the premises, they want to inspect everything. There's
15 no description whatsoever to the premises inspection. And all
16 of the materials that were in the file that were discoverable,
17 and the clients materials were immediately given to
18 Ms. Parazar, were copied onto a drive, and given to -- a flash
19 drive, and given to her at the time that we withdrew and were
20 allowed to withdraw from the Court.

21 Mr. Trout was subpoenaed for a deposition by
22 Ms. Parazar. He showed up for that deposition and gave
23 testimony. And it was a very -- I wasn't aware when it was
24 happening, but I've since looked at the deposition. It was a
25 very hostile deposition. And there was overlap between this

1 case, Ms. Smith's case and the Parazar case. And I'm not sure
2 why Ms. Smith or what intentions Ms. Smith has in re-deposing
3 him or deposing him again.

4 My knowledge is very limited. But I think you
5 understand the law, obviously, Judge, and the facts and
6 circumstances. I won't go on anymore other than to say this
7 has been very upsetting. Ms. Parazar put a scathing comment
8 online about me, personally attacking me and my religion and my
9 position.

10 I was served during a religious service approximately
11 one business day before the deposition was set requiring me to
12 file immediate motion so I couldn't do a meet and confer. I
13 understand Mr. Trout attempted to do a meet and confer. But
14 it's been very upsetting. And so we appreciate being here
15 today, Judge, and look forward to you ruling. Thank you.

16 **THE COURT:** Thank you. Ms. Smith, why don't you
17 address Mr. Bowen's Motion to Quash your subpoenas --

18 **MS. SMITH:** Sure.

19 **THE COURT:** -- and then also, you can address after
20 that your Motion to Strike the reply which you filed on ECF
21 number 50.

22 **MS. SMITH:** Yes. Okay. Sure. So Mr. Bowen's Motion
23 to Quash, I didn't get that. So I'm not sure what he wrote.

24 But I did file a motion to hold them in contempt and
25 to compel them. So before all of these subpoenas went out,

1 there was a notice sent to the other side obviously saying
2 that, "Hey, I'm going to send out these subpoenas."

3 So as soon as that notice was filed, I guess, they
4 got in contact with Mr. Trout and Mr. Bowen because then
5 Mr. Trout and Mr. Bowen started trying to dodge service.

6 And my process server filed an affidavit, you know,
7 it's on file actually showing that they were attempting to
8 dodge service, meaning Mr. Bowen was telling the process
9 server, which I believe my mom said he did the same thing to
10 her. Which there were issues with them because they were
11 working with the, I guess, the other side's attorney in my
12 mom's case to basically sabotage my mom's case.

13 And so yeah, my process servers tried to serve him.
14 Kept telling her he's out of town, he's not there, he left
15 early, all of the excuses in the book that he could give. And
16 so I told the process server to well, serve him at church
17 because I am pretty sure he'll be a church on Sunday, he's the
18 bishop. And I know that through a family friend. But he's the
19 bishop so I'm pretty sure he'll be at church on Sunday. Since
20 he's dodging service at his own law firm, serve him at church.
21 So I did not -- my first -- my go to wasn't to serve him at
22 church but he kept -- he was dodging service.

23 And then with Mr. Trout he was doing the same thing.
24 And that's why I believe that they got in contact with
25 Mr. Trout and Mr. Bowen. So Mr. Trout was doing the same

1 thing. I tried to serve him at his -- wherever he worked, his
2 workplace first. My process server went there, first they told
3 her he wasn't there, same thing.

4 Then the day that -- there was a day he was there, my
5 process server said he refused to come forward to accept the
6 subpoena. Okay so I had to now find a different route again to
7 serve him. So he got served at his home. So they knew about -
8 - it wasn't like they -- they're now finding -- they were now
9 finding out about the subpoena. They knew about the subpoenas
10 before they were served on them. They were just trying or
11 attempting to dodge service.

12 And so now they're acting like, "Oh well, we just got
13 it one day before the deposition or we just got it." I think
14 in Brandon's case, a few days before the deposition, and they
15 are acting like, "Oh well, we can't attend because of short
16 notice." When they already knew about the subpoena and they
17 knew that my process server was attempting to serve them, but
18 they were being untruthful and saying that they either weren't
19 there or they refused to come forward and accept the subpoenas.

20 And so with that I think their argument should be
21 disregarded as to why they didn't show up for their depositions
22 that were scheduled.

23 So the reason that they were subpoenaed is because
24 employees at Fennemore Craig's specifically send them letters
25 containing, you know, statements saying that I was a threat,

1 that I was a danger, that they wanted to include me or bring me
2 into my mom's lawsuit, because again, I told you I'm not
3 mentioned in my mom's lawsuit, and I'm really not a part of my
4 mom's lawsuit until, well, their side attempted to bring me in
5 as a witness, not my mom, they did.

6 And so the reason that Mr. Bowen and Mr. Trout were
7 subpoenaed for a deposition and for documents is because there
8 is reason to believe, especially from the document that was
9 sent from one of their employees at Fennemore Craig to
10 Mr. Trout and Mr. Bowen basically containing the slanderous
11 statements, there is reason to believe also that Mr. Trout and
12 Mr. Bowen have further communications with either that
13 employee, that same employee or other employees at Fennemore
14 Craig basically again, containing these slanderous statements,
15 the statements saying that I'm a threat, this, that against me.
16 Which is not under any type of litigation privilege because I'm
17 not involved in any litigation that either they were on or that
18 was concerned with them. So anything about me that they sent
19 or that they received has nothing to do with a litigation as
20 they may try to say.

21 On my Motion to Strike, so I asked to strike
22 defense's reply which included a new evidence and new exhibits.
23 So defense basically filed his emergency motion. Now instead
24 of attorney-client and all that he was asserting, "Oh, she has
25 issues," I guess because I had mental health issues in the past

1 or not in the past that one day basically that I shouldn't be
2 allowed to do depositions or gather documents or whatever. And
3 so he inserted my medical records, which I also asked the Court
4 to seal and provide injunctive relief against him continually
5 distributing the medical records publicly.

6 And then -- so he made all these accusations saying
7 that I had made threats in the past, you know, at times they
8 all say, "Oh we -- it's just a reasonable belief." But then
9 when they write and sometimes when they make statements, it'll
10 be like you know, they state it as if it's fact, meaning it
11 turns from, oh, just being belief to defamation because now
12 you're, you know, distributing and telling third parties that
13 I'm doing these things when I'm not or that I'm crazy, stuff
14 like that or that I have schizophrenia, and I don't. Things of
15 that nature.

16 And so he made all those assertions in his initial
17 brief. I replied stating, you know, they're incorrect and why
18 they're incorrect. He then files a reply now packing on
19 evidence that is also -- that also contains factual
20 contentions, because the evidence that he included, at least
21 the way he described it, is not true.

22 I can't respond to that because then if I did
23 respond, he will file a Motion to Strike my Response, right?
24 Because you only get a brief opposition and then a response.
25 So it's unfair and, you know, other Courts have stricken

1 replies where it includes new evidence and new case law and new
2 arguments.

3 And so for him to then come on and try to pack on
4 evidence after he did his initial brief just making these
5 assertions, he didn't include any evidence, I don't have to
6 respond to evidence that he doesn't include.

7 But for him to now try to put that evidence in a
8 reply to my opposition and prevent me from being able to
9 respond and actually, you know, oppose his erroneous arguments,
10 I think it's unfair for him to be able to keep that on the
11 table without either allowing me to respond or having it
12 stricken.

13 Which I believe it should be stricken really because
14 it has nothing to do with the emergency Motion to Quash which
15 is based on the subpoenas and gathering evidence and being able
16 to take depositions. I don't believe that has anything to do
17 with it, I just think it will continue to be a delay, so I
18 believe it should be stricken from the record, the evidence and
19 his response.

20 **THE COURT:** Thank you. I have one question,
21 Mr. Fugazzi, I know you filed, fairly recently, a Motion to
22 Extend some discovery. And do you know the ECF number of that
23 by any chance?

24 **MR. FUGAZZI:** It was filed on the 11th of the month,
25 your Honor.

1 **THE COURT:** Something -- and I apologize --

2 **MR. FUGAZZI:** I've got it.

3 **THE COURT:** I am in a borrowed courtroom and I can't
4 access my system maybe the --

5 **MR. FUGAZZI:** No, I've got it here, Judge --

6 **THE COURT:** Okay.

7 **MR. FUGAZZI:** -- if you give me one moment.

8 **THE COURT:** 61 is what the --

9 **MR. FUGAZZI:** It should be --

10 **THE COURT:** -- put --

11 **MR. FUGAZZI:** Yeah, that sounds right.

12 **THE COURT:** Okay.

13 **MR. FUGAZZI:** It was September 11th.

14 **THE COURT:** Okay.

15 **MR. FUGAZZI:** Don't apologize.

16 **THE COURT:** I don't need to hear anything else. If
17 there's something you feel compelled to say, I won't stop you.

18 **MR. FUGAZZI:** Thirty seconds.

19 **THE COURT:** Mr. Bowen, the same.

20 **MR. FUGAZZI:** Your Honor, I can be 30 seconds. The
21 simple response is Judge Navarro herself in the Evans versus
22 Encore Event Technologies case that we cited, it's unpublished
23 but it's an order from Judge Navarro in footnote one where she
24 says, "in a reply a party may use evidence to rebut evidence
25 presented in an opposition to a Motion for Summary Judgment."

1 And there are clear allegations on page 3 and 11 that Ms. Smith
2 said she never threatened, never made a threat, there are also
3 allegations that she never even knew about the attachment of
4 her medical records and we attached declarations with her
5 authenticating them. And the evidence that we attached to our
6 reply rebut that argument that she never threatened anyone. So
7 unless the Court has questions --

8 **THE COURT:** I understand quite well.

9 **MR. FUGAZZI:** Thank you, your Honor.

10 **THE COURT:** Thank you, Mr. Fugazzi. Mr. Bowen did
11 you have something brief?

12 **MR. BOWEN:** Yeah, just brief, Judge. Thank you. I
13 just can't let those allegations, I apologize. I want to make
14 sure because we're on the record. Nobody tried to evade
15 service, your Honor. In fact, Mr. Trout did give a deposition
16 on the one matter. I just would like to indicate that at no
17 time did my firm ever, ever collude with Fennemore Craig nor
18 have we ever done that. Our goal was always to defend
19 Ms. Parazar to the best of our ability until we determined we
20 could not in good faith further act as her counsel and at that
21 time withdrew. Thank you.

22 **THE COURT:** Thank you.

23 There are 12 motions pending, perhaps 13. Those are
24 ECF numbers 19, 31, 36, 37, 38, 42, 43, 44, 50, 52, 53, 54, and
25 61. Number 19 is a Motion to Stay Discovery.

1 With that motion we stayed the rest of the -- if that
2 motion is granted, the remainder of the motions are rendered
3 moot, meaning they won't be ruled on at this time and they will
4 be dismissed without -- they would be denied without prejudice,
5 meaning they could be refiled at a time where discovery was
6 reopened should the Court not grant the Motion to Dismiss,
7 which is not before me. The Motion to Dismiss is before Judge
8 -- I'm sorry, Judge Navarro and it is she who would decide that
9 motion as well as the Motion to Remand this Case, this
10 particular case to State Court.

11 Court will issue a written order on the Motion to
12 Stay Discovery, but I wanted to tell you in Court today in case
13 you have any questions that that motion will be granted.

14 And because the Motion to Stay Discovery will be
15 granted, all other pending motions will be denied without
16 prejudice as moot to be refiled should the Court not -- meaning
17 Judge Navarro, not either remand this case to State Court,
18 Ms. Smith, or not dismiss it.

19 And it is my job to take a preliminary look at the
20 Motion to Dismiss and the complaint you found, the basis for
21 the motion, your opposition, and I have done that. And I have
22 found that there is a substantial likelihood that the motion
23 will be granted and that is the primary reason for staying
24 discovery.

25 Do you have any questions about what I've just said,

1 Ms. Smith?

2 **MS. SMITH:** Yes. So the Motion to Dismiss, that's
3 basically a Motion for Summary Judgment if you looked at it,
4 and --

5 **THE COURT:** I do not decide that. That is in front
6 of --

7 **MS. SMITH:** Okay.

8 **THE COURT:** -- Judge Navarro. And she will decide
9 whether or -- whether to grant it or deny it. That is entirely
10 within her purview.

11 **MS. SMITH:** Okay, but you said you looked at it.

12 **THE COURT:** If she believes it is a Motion for
13 Summary Judgment and it is an improper motion, she would deny
14 it. But I am not telling you that she will or will not deny
15 it. It is not something that I have any input on. I am simply
16 here to deal with the discovery issues and all of those that
17 have been discussed today, the motion numbers that I have
18 mentioned to you.

19 **MS. SMITH:** Okay. But you said you looked at the
20 Motion to Dismiss and you feel like that it'll be granted.

21 **THE COURT:** I --

22 **MS. SMITH:** So that's why you're staying or you're
23 preventing me from deposing the parties who are at issue in
24 that motion.

25 **THE COURT:** The law on motions to stay discovery

1 require the U.S. Magistrate Judge, which is what I am, to take
2 what's called a preliminary peek to look at the Motion to
3 Dismiss and to make a determination based on my experience and
4 my understanding of the law as to whether that motion is likely
5 to be granted.

6 If I believe that there is a substantial likelihood
7 of that motion being granted, then I am empowered to Stay
8 discovery. So I could be wrong, because this is Judge
9 Navarro's decision and Judge Navarro and I do not discuss the
10 motions before her or before me. She makes her decisions and I
11 make mine. They are separate.

12 So she will decide the Motion to Dismiss. I've not
13 discussed that with her. It is my opinion that there is a
14 likelihood, a strong likelihood that the motion will be
15 granted. And I'm exercising my discretion based on that
16 belief, based on my legal experience, and my understanding of
17 the law and my position as a Judge in this case to Stay
18 discovery and dismiss -- deny the remaining motions that I've
19 mentioned without prejudice, meaning they can be refiled and
20 reargued should Judge Navarro not grant the Motion to Dismiss.
21 They're not gone forever. They're gone until that -- until
22 Judge Navarro makes a decision on the Motion to Dismiss.

23 **MS. SMITH:** Okay. And what -- can you state what
24 specifically you looked at or what specifically you -- well,
25 what specifically you looked at in the Motion to Dismiss that

1 caused you to have that opinion?

2 **THE COURT:** There is a very -- there are several very
3 strong privileges under the law that exist that are well
4 settled. Anti-SLAPP statutes are very clear. The right to
5 petition the Court and as well -- and you have that same right.
6 And the litigation privilege, privilege of what is said in a
7 court proceeding. Those matters cannot be the basis for claims
8 of defamation or slander.

9 In addition, the civil conspiracy that you pled is
10 against Fennemore Craig only, and the law in Nevada is very
11 clear that a company cannot conspire with itself. So there
12 must be more than one entity, a company and its employees
13 cannot be co-conspirators. There must be two separate
14 unrelated entities, and there is only one here.

15 Your emotional intentional infliction of emotional
16 distress claim just doesn't state a claim upon which relief can
17 be granted. The use of the language that you allege, I
18 understand is offensive and would be offensive to many people,
19 and even if true on this single occasion that it occurred,
20 would not be sufficient to state an intentional infliction of
21 emotional distress claim under Nevada law.

22 So the claims that you have asserted, civil
23 conspiracy, slander, slander per se, defamation, defamation per
24 se, and the intentional infliction of claims will fail, I
25 believe, based on the law that is applicable to those claims.

1 With respect to the settlement agreement, there is an
2 exception to that settlement agreement that allows the
3 disclosure of it for purposes of either enforcing it or to
4 others who need to know within the law firm. The use of that
5 settlement agreement in this case was not impermissible in my
6 legal opinion.

7 So I believe that your claims will fail and/or be
8 remanded. The Court -- Judge Navarro may just choose to remand
9 them to State Court, but I do not believe they will survive in
10 the Federal Court System.

11 That is why I'm Staying discovery. But I will put
12 all of that in a written order for you so that you can see it
13 and analyze it for yourself.

14 **MS. SMITH:** Okay. And did you just read their Motion
15 to Dismiss or did you also look at the opposition?

16 **THE COURT:** I looked at --

17 **MS. SMITH:** Or just their --

18 **THE COURT:** -- the motion, the opposition, and the
19 reply. I've looked at all the pleadings in this case not just
20 one side. I've read your motions, your oppositions, your
21 replies, defendant's motions, oppositions, and replies, as well
22 as those filed by third parties. I looked at everything, spent
23 quite a bit of time. That's why this has been sitting for some
24 period of time. It was a lot to review.

25 **MS. SMITH:** All right. So the defamation claim is

1 not only -- is not about any statements that they made in
2 court. That's the thing.

3 **THE COURT:** Well, the Judge --

4 **MS. SMITH:** It's about --

5 **THE COURT:** Judge Navarro will make that decision as
6 I said I'm not making a decision that your case is being
7 dismissed. I'm making a decision that your case is being Stayed
8 for discovery purposes.

9 If there's nothing further from defendants?

10 **MR. FUGAZZI:** The Stay is effective as of now is the
11 question?

12 **THE COURT:** The Stay is effective as of the Court's
13 announcement of its decision today and a written order will
14 follow so that Ms. Smith and anybody who chooses to take issue
15 with what is written may do so in accordance with the rules
16 applicable in Federal Court.

17 **MR. FUGAZZI:** Thank you, your Honor.

18 **MR. BOWEN:** Thank you, your Honor.

19 **THE MARSHAL:** All rise.

20 **(Audio ended at 2:15 p.m.)**

21

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23

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25

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in black ink, appearing to read "Toni Hudson", is written above a horizontal line.

Signed

October 4, 2019

Dated

TONI HUDSON, TRANSCRIBER

CERTIFICATE OF SERVICE

I certify that I am serving a true and correct copy of the attached OBJECTIONS TO THE NEW
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATIONS on the parties set forth below by:

_____ placing an original or true copy thereof in a sealed envelope with the correct prepaid
postage affixed for collection and mailing in the United States Mail, at Las Vegas,
Nevada.

 X Certified Mail, Return Receipt Requested of the document(s) listed above to the
person(s) at the address(es) set forth below

_____ E-service

_____ Personal delivery through a process server of the document(s) listed above to the
person(s) at the address(es) set forth below

Alex Fugazzi and Michael Paretti

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 /s/ Latonia Smith
Plaintiff, In Proper Person

Dated this 7th day of October 2019